

1 upon which it can determine whether BellSouth has met the
2 requirements to provide in-region interLATA service, and
3 what standards and criteria are appropriate in order to
4 determine whether those requirements have been met. I will
5 demonstrate to the Commission that BellSouth
6 Telecommunications, Inc. ("BellSouth") has been delaying the
7 advent of interconnection-based local competition in
8 Georgia. In particular, I will show that BellSouth has been
9 engaging in an attempt to hamstring Intermedia's ability to
10 provide facilities-based competitive local exchange service
11 through various means.

12
13 BellSouth is requesting that this Commission resolve
14 two issues in this proceeding: whether BellSouth's
15 Statement of Generally Available Terms and Conditions (the
16 "Statement") complies with the 14-point checklist of Section
17 271 of the Telecommunications Act of 1996 (the "1996 Act"),
18 and whether it is in the public interest for BellSouth Long
19 Distance to enter the interLATA in-region market. See TR at
20 815. Based on Intermedia's personal experience with
21 BellSouth, the Commission should find that the Statement
22 does not comply with the 14-point checklist and, similarly,
23 that BellSouth's entry into the in-region interLATA market
24 is not presently in the public interest. In particular,
25 BellSouth's inadequate performance implementing negotiated
26 and arbitrated interconnection agreements must first be
27 cured, and actual competition pursuant to fully implemented
28 interconnection arrangements must take place, before

1 BellSouth is permitted to provide in-region interLATA
2 services pursuant to Section 271 of the 1996 Act. In
3 addition, the Commission must establish reporting and
4 enforcement requirements to ensure continued adherence to
5 the 1996 Act after BellSouth's application for in-region
6 interLATA authority is granted. As Mr. Varner points out
7 during his cross-examination in January, "there is a very
8 good story to tell." TR at 87. Our story clearly shows
9 that the local market remains closed to competition.

10

11 Q: PLEASE SUMMARIZE YOUR TESTIMONY.

12

13 A: BellSouth has not, at this time, satisfied the requirements
14 of Section 271 to allow it to seek in-region interLATA
15 authority. BellSouth has failed to implement its negotiated
16 interconnection agreement with Intermedia (the "Agreement")
17 (see Exhibit A), and has persistently failed to address
18 Intermedia's requests and/or concerns concerning, among
19 other things, the provision of unbundled loops, subloop
20 unbundling, billing arrangements, and resale. Either
21 BellSouth is purposefully engaging in dilatory and
22 anticompetitive conduct to impede the advent of local
23 competition in Georgia, or is simply unable to appropriately
24 allocate the resources necessary to implement its agreement
25 with Intermedia. Regardless of the reason behind
26 BellSouth's failure to implement the Agreement, the end-
27 result nevertheless is the same: Intermedia is unable to
28 provide interconnection-based local exchange service in

1 Georgia. BellSouth's actions, moreover, have caused, and
2 continue to cause, Intermedia to expend valuable resources
3 and incur additional costs that should otherwise not have
4 been incurred if BellSouth had been forthcoming and more
5 cooperative in its dealings with Intermedia. BellSouth's
6 actions, taken individually and as a whole, have the effect
7 of discouraging local competition in Georgia in
8 contravention of the 1996 Act and this Commission's
9 procompetitive goals. As BellSouth's witness Mr. Varner has
10 acknowledged during the hearing, failure to implement an
11 agreed interconnection agreement within six months is
12 "certainly a cause of concern." TR at 250. This
13 Commission should take a hard look at Intermedia's
14 experience with BellSouth and find that there is indeed a
15 "cause of concern" here.

16

17

BACKGROUND

18

19 Q: IS INTERMEDIA AUTHORIZED TO PROVIDE COMPETITIVE LOCAL
20 EXCHANGE SERVICE IN GEORGIA?

21

22 A: Yes, Intermedia has been authorized by the Commission to
23 provide both facilities-based and resold local exchange
24 service, as well as exchange access services. To the best
25 of my knowledge, other carriers have also been authorized to
26 provide such services, although Intermedia has not conducted
27 a survey to identify these companies.

28

1 Q: DOES INTERMEDIA PROVIDE FACILITIES-BASED LOCAL EXCHANGE
2 SERVICE IN GEORGIA AT THIS TIME?

3

4 A: Intermedia has not yet been able to provide facilities-based
5 local exchange service in Georgia due to BellSouth's delay
6 in implementing the provisions of the Agreement according to
7 the Implementation Plan agreed to by the parties, compounded
8 by BellSouth's failure to live up to certain terms of the
9 Agreement. Moreover, Intermedia is not aware of any other
10 entities that are providing facilities-based local exchange
11 services in Georgia at this time.

12

13 Q: PLEASE DESCRIBE INTERMEDIA'S OPERATIONS IN GEORGIA,
14 INCLUDING THE NUMBER OF ACCESS LINES SERVED, THE NUMBER OF
15 SWITCHES DEPLOYED, THE NUMBER AND TYPES OF CUSTOMERS,
16 INTRASTATE REVENUES, ETC.

17

18 A: At present, Intermedia has not deployed its own access lines
19 in Georgia. Therefore, Intermedia has no revenues from
20 facilities-based local exchange services within the State of
21 Georgia. Intermedia is now in the process of procuring a
22 switch and other facilities that will enable it to provide
23 facilities-based local service in Georgia. Intermedia
24 anticipates that it will have these facilities deployed by
25 the end of the first quarter of 1997.

26 With respect to resold local exchange services,
27 Intermedia is using BellSouth access lines. BellSouth
28 decides how it will route its traffic and, therefore,
29 Intermedia is unable to determine the number of BellSouth
30 switches to which its resold local loops are connected. At

1 least initially, Intermedia anticipates that the majority of
2 its services -- both resold and facilities-based -- will be
3 provided in the Atlanta metropolitan area, although
4 Intermedia expects to provide some facilities-based or
5 resold services throughout the state.

6
7 Q: ARE YOU AWARE OF ANY REPORTS, STUDIES, OR ANALYSES, CREATED
8 WITHIN THE PAST YEAR PRECEDING BELL SOUTH'S APPLICATION, THAT
9 CONTAIN DATA ON MARKET SHARES OF BELL SOUTH AND ITS
10 COMPETITORS, OR EVALUATE THE LIKELY ENTRY, SUCCESS, OR RATE
11 OF GROWTH OF COMPETITORS OR POTENTIAL COMPETITORS?

12
13 A: Yes, I am. Salomon Brothers published an analysis of the
14 effect of the U.S. Court of Appeals for the 8th Circuit's
15 stay of the pricing provisions of the Federal Communications
16 Commission's ("FCC") Local Competition Order on the entry of
17 competitors into the local exchange market and BOC entry
18 into long distance. The analysis determined that the
19 partial stay will clearly delay BOC entry into in-region,
20 interLATA long distance "to beyond our original 1998 target
21 which was already later than when the Bells said they would
22 get in. This is because the FCC must approve entry based
23 on the public interest being served, which clearly is a
24 function of some of the rules that are being debated in the
25 courts." A copy of the Salomon Brothers Analysis is
26 attached hereto and incorporated herein by reference as
27 Exhibit B.

28
29 Lehman Brothers also published a report entitled
30 "Telecommunications Regulatory Overview: Completing the

1 Trilogy - THE FCC ORDER, UNIVERSAL SERVICE AND ACCESS
2 CHARGES," dated December 17, 1996. The report states:

3
4 We also believe it will take until mid ['98] for the
5 RBOCs to establish the infrastructure to provision
6 service to the extent necessary to satisfy the DOJ and
7 FCC. The DOJ has stated that all three forms of local
8 competition (on-net, unbundled loop, and resale) need
9 to be established and irreversible. They further
10 stipulate that the RBOCs must have the support systems
11 in place and working with the necessary speed to ensure
12 timely provisioning of CLEC and IXC orders. Given the
13 sizable financial impact of these decisions, the
14 process could be delayed even longer due to the IXC and
15 RBOC legal challenges and appeals.

16
17
18 The Lehman Brothers report is attached hereto and
19 incorporated herein by reference as Exhibit C.

20
21 Q: ARE YOU AWARE OF ANY COMPLAINTS MADE TO BELLSOUTH, TO THE
22 GEORGIA PUBLIC SERVICE COMMISSION, TO THE FCC OR TO OTHER
23 GOVERNMENTAL AUTHORITIES BY OTHER CARRIERS, COMPETITORS, OR
24 ENTITIES THAT HAVE REQUESTED INTERCONNECTION, ACCESS OR THE
25 ABILITY TO RESELL BELLSOUTH SERVICES?

26
27 A: Intermedia does not currently have pending any formal
28 complaints with the Commission or the FCC. Intermedia has
29 taken issue with BellSouth on its failure to implement
30 certain provisions of the Agreement and its refusal to
31 provide Intermedia with, among other things, certain
32 requested unbundled elements. However, Intermedia is still
33 in the process of attempting to resolve these issues
34 directly with BellSouth, and has not yet pursued any formal
35 legal or regulatory actions against BellSouth. Intermedia
36 has not, however, waived any of its rights to pursue
37 remedies to which it is entitled under the law. I am aware,

1 however, that ACSI, a competitive local exchange carrier,
2 has pending complaints before the Commission and the FCC
3 concerning, among other things, BellSouth's inability to
4 provide unbundled loops in a timely manner in violation of
5 Section 251 of the 1996 Act. I understand that the FCC case
6 has been put on a "fast track," while the Georgia case has
7 been tentatively suspended pending the formation of a task
8 force.

9
10 SPECIFIC ACTS OF NONPERFORMANCE BY BELL SOUTH

11
12 Q: PLEASE DESCRIBE INTERMEDIA'S AGREEMENT WITH BELL SOUTH.

13
14 A: Intermedia entered into a binding negotiated agreement with
15 BellSouth on June 21, 1996 (the "Agreement"), a copy of
16 which is appended to my testimony as Exhibit A. The
17 Agreement provides for three methods of interconnecting
18 facilities: (i) physical collocation; (ii) virtual
19 collocation where physical collocation is not practical for
20 technical reasons or space limitations; and (iii)
21 interconnection via the purchase of facilities from either
22 party by the other party. The parties agreed that
23 reciprocal connectivity would be established at BellSouth
24 access tandems or end offices. See Section IV of Agreement,
25 "Local Interconnection," for the specific terms and
26 conditions governing interconnection. The Agreement also
27 provides that BellSouth will offer to Intermedia unbundled
28 loop channelization system service which provides the

1 multiplexing function to convert 96 voice grade loops into a
2 DS1 (1.544 Mbps) circuit for connection with Intermedia's
3 point of interface; unbundled local transport from the
4 trunk side of its switch; unbundled local switching; and,
5 upon request of Intermedia, and to the extent technically
6 feasible, access to additional BellSouth network elements
7 for the provision of an Intermedia telecommunications
8 service. See Section VII of Agreement, "Provision of
9 Unbundled Elements," for the specific terms and conditions
10 governing the provision of unbundled network elements. The
11 Agreement also contains provisions pertaining to BellSouth's
12 offer of services available for resale. The Agreement
13 provides that telecommunications services available for
14 purchase by Intermedia for the purposes of resale to
15 Intermedia business end users shall be available at a 17.3%
16 discount below the retail rates. This discount rate is
17 subject to change as a result of final resolution of the
18 Commission's June 12, 1996 Order. See Section VII of
19 Agreement, "BellSouth's Offer of Services Available for
20 Resale," for the specific terms and conditions governing
21 resale.

22
23 The Agreement was approved by the Georgia Public
24 Service Commission. However, as discussed in more detail
25 below, BellSouth has failed to implement the provisions of
26 the Agreement according to the Implementation Plan agreed to
27 by the parties, has failed to live up to certain terms of
28 the Agreement, has failed to timely provide Intermedia with

1 certain unbundled elements, and has refused to provide
2 Intermedia with certain other requested unbundled elements.

3

4 To my knowledge, and based on the transcript of the
5 January hearing in this proceeding, other parties have
6 requested from BellSouth interconnection, unbundled
7 elements, or the ability to resell BellSouth's services. I
8 also understand from the assertions of counsel for several
9 competitive carriers in the transcript of the hearing that
10 virtually all of these carriers have had, or are having,
11 problems implementing their respective interconnection
12 agreements with BellSouth.

13

14 Q: PLEASE DESCRIBE GENERALLY INTERMEDIA'S EXPERIENCE WITH
15 BELL SOUTH.

16

17 A: As I stated earlier, Intermedia and BellSouth signed a
18 negotiated agreement on June 21, 1996, specifying the terms
19 and conditions under which BellSouth will provide Intermedia
20 with access and interconnection to its network facilities.
21 To date, that Agreement remains largely unimplemented.
22 BellSouth has not yet established the infrastructure
23 necessary to support implementation of the Agreement. As a
24 result, Intermedia has been unable to initiate facilities-
25 based service to date, although its plan was to initiate
26 facilities-based service during the first quarter of 1997.

27

1 There are several possible reasons for BellSouth's
2 delay in implementing the Agreement. It is possible that
3 new applications raise technical and administrative issues
4 that take time to resolve. It is conceivable also that
5 there may be difficulties in communications and bureaucratic
6 delays. A likely possibility is that BellSouth may be
7 failing to allocate the resources necessary for
8 implementation. It is also possible that BellSouth may
9 intentionally be attempting to slow the implementation
10 process so as to delay competition, particularly for
11 facilities-based local exchange services. Indeed, in light
12 of BellSouth's interpretation of Section 271, which became
13 all too apparent during the cross examination of BellSouth's
14 witnesses at the January hearing, it is possible that
15 BellSouth is deliberately delaying facilities-based
16 competition in order to qualify under Section 271(c)(1)(B)
17 of the 1996 Act. Regardless of the reason for BellSouth's
18 delay in implementing the Agreement with Intermedia, one
19 fact is clear at this time: the robust facilities-based
20 local exchange competition envisioned in the 1996 Act is
21 still far from being accomplished.

22
23 As I discuss in greater detail later, Intermedia is
24 having continuing problems with BellSouth's failure to
25 implement the Agreement in a reasonable and timely manner.
26 BellSouth's inadequate billing data, its refusal so far to
27 provide Intermedia with subloop unbundling where it is
28 technically feasible to do so, and its failure to establish

1 unbundled loop elements or reasonable charges for unbundled
2 Frame Relay loops, are just a few examples of BellSouth
3 delays that are creating an insurmountable barrier to
4 Intermedia entering the local exchange market as a viable
5 competitor to BellSouth.

6

7 Q: CAN YOU BE MORE SPECIFIC?

8

9 A: Yes. BellSouth has been remiss in several areas, each of
10 which I will discuss in detail here: the provision of
11 unbundled loops, subloop unbundling, billing arrangements,
12 and resale.

13

14 Q: PLEASE EXPLAIN WHY BELL SOUTH HAS BEEN REMISS IN PROVIDING
15 UNBUNDLED LOOPS.

16

17 A: On July 11, 1996, Intermedia submitted to BellSouth a
18 written request that BellSouth, pursuant to both Section 251
19 of the 1996 Act and the terms of the Agreement, provide to
20 Intermedia, among other things, an unbundled digital loop
21 capable of transporting frame relay service and an unbundled
22 ISDN loop. This letter is attached to my testimony as
23 Exhibit D. In BellSouth's response dated September 10,
24 1996--two months after Intermedia's initial request for
25 unbundled frame relay and ISDN loops--BellSouth stated that
26 it could provide the unbundled loops requested by
27 Intermedia, but that the loops could not be provisioned
28 because BellSouth did not yet have prices developed for the

1 loops. A copy of the BellSouth response is appended to my
2 testimony as Exhibit E. In subsequent discussions,
3 BellSouth personnel suggested that, until unbundled loops
4 could be provided, BellSouth would provide Intermedia with
5 portions of its tariffed Synchronet Service as a temporary
6 substitute for the unbundled loops that Intermedia had
7 requested. In a facsimile sent to Intermedia on June 11,
8 1996, BellSouth proposed an unbundled pricing arrangement
9 for its Synchronet service. A copy of the facsimile is
10 attached to my testimony as Exhibit F. To date, Intermedia
11 has not been able to obtain the unbundled loops that it
12 first requested from BellSouth seven months ago.

13
14 At the January hearing, BellSouth's witness, Mr.
15 Scheye, on cross-examination by Intermedia's counsel, Jon
16 Canis, admitted that BellSouth knew that it was technically
17 feasible to provision loops capable of transporting frame
18 relay and ISDN loops in the Fall of 1996. TR at 693.
19 Moreover, Mr. Scheye acknowledged that the prices for these
20 loops were known to BellSouth as early as November 8, 1996.
21 TR at 694. Indeed, BellSouth's Statement of Generally
22 Available Terms and Conditions (the "Statement") lists the
23 availability of, and prices for, 2-wire ISDN and 2-wire and
24 4-wire HDSL loops (which can be used for frame relay
25 service). Yet, BellSouth, through its account manager and
26 other personnel, has consistently asserted (and as recently
27 as the end of January) that pricing was not available for
28 frame relay ISDN loops (TR at 695), forcing Intermedia to

1 substitute Synchronet service--a more expensive, technically
2 inferior, and administratively burdensome alternative. The
3 effect of BellSouth's conduct has been to delay Intermedia's
4 entry into the local exchange market in Georgia as a
5 facilities-based carrier.
6

7 BellSouth's position on its ability to bill for
8 unbundled loops has also added to the delay in implementing
9 the Agreement. BellSouth has informed Intermedia that
10 unbundled elements will ultimately be billed through the
11 CRIS System. A copy of Intermedia's letter to BellSouth
12 concerning this issue is appended to my testimony as Exhibit
13 G. Billing through the CABS system, however, is more
14 efficient, less costly, and can be implemented more quickly.
15 In particular, because CABS is a carrier-based system, it
16 can generate the data that Intermedia needs to prepare bills
17 and verify calls without costly and time-consuming
18 modifications. Being an end-user focused system, CRIS
19 cannot provide these features.
20

21 On Mr. Scheye's cross examination, however, Mr. Scheye
22 acknowledged that billing for unbundled loops is available
23 through CABS now. Moreover, Mr. Scheye testified that it
24 has never been BellSouth's position that CABS is
25 inappropriate for provisioning of unbundled loops, and that
26 CRIS is the appropriate system for these loops:
27

1 Q: For unbundled loops you mentioned they are
2 available through CABS, carrier access
3 billing system. Is that the case now?

4 A: Yes.

5 Q: It is available now?

6 A: Yes.

7 Q: Has it ever been BellSouth's position that
8 CABS is inappropriate for provisioning of
9 unbundled loops and that the CRIS system is,
10 in fact, the appropriate system to use?

11 A: No.

12 Q: That has never been BellSouth's position?

13 A: For unbundled loops?

14 Q: Yes.

15 A: No. As a matter of fact, today if you ask me
16 for a CRIS bill for an unbundled loop, I
17 don't think I could provide it to you.

18

19 TR at 718. Mr. Scheye's testimony clearly contradicts what
20 BellSouth employees have been telling Intermedia all along.
21 The effect of BellSouth's conduct is to add confusion to an
22 already complicated process and, thus, delay Intermedia's
23 entry into the local exchange market in Georgia as a
24 facilities-based carrier.

25

26 Q: PLEASE EXPLAIN WHY BELL SOUTH HAS BEEN REMISS IN PROVIDING
27 SUBLOOP UNBUNDLING.

28

1 A: By letter dated July 11, 1996, Intermedia requested that
2 BellSouth provide Intermedia with line side loop unbundling
3 that supports a multi-host environment. See Exhibit D. In
4 its response, dated September 10, 1996--two months after
5 Intermedia's initial request--BellSouth refused to provide
6 Intermedia with the subloop unbundling it requested,
7 claiming that it was not technically feasible to provide
8 Intermedia with this unbundled element. See Exhibit E.
9 While such unbundling requires modification of the TR303
10 industry standard to extend that standard to the local loop
11 environment, provision of this unbundled element is
12 technically feasible today. In fact, BellSouth's recently
13 filed Statement lists the availability of subloop elements.
14 TR at 698. Moreover, as Mr. Scheye acknowledged under
15 cross-examination, BellSouth is fully capable of providing
16 subloop unbundling, and had determined that subloop
17 unbundling was technically feasible in December 1996:

18

19 Q: Dr. Scheye, will BellSouth now provide sub-
20 loop unbundling?

21 A: Yes, in the state of Georgia, that is
22 correct.

23 Q: When did BellSouth determine that it was
24 technically feasible to do so?

25 A: That came out of the . . . AT&T or MCI
26 arbitration case. . . . The AT&T arbitration
27 [order] came out December 4th. The MCI

1 arbitration case, the date was December 23rd

2

3

4 TR at 697. Yet, BellSouth, through its employees, has
5 always asserted to Intermedia (and as recently as January
6 1997) that subloop unbundling was not technically feasible.
7 A copy of Intermedia's correspondence to BellSouth on this
8 issue is appended to my testimony as Exhibit G.

9

10 One of the reasons cited by BellSouth for denying
11 Intermedia's request for line side loop unbundling that
12 supports a multi-host environment was that the Loop
13 Facilities Assignment and Control System ("LFACS") and Trunk
14 Inventory and Record Keeping System ("TIRKS") cannot handle
15 the administration of unbundled loops. See Exhibit E. On
16 cross-examination of Mr. Scheye, however, Mr. Scheye stated
17 that LFACS and TIRKS, as they currently exist, are capable
18 of handling unbundled loop assignments:

19

20 Q: Do you know whether [TIRKS and LFACS] in
21 their present state as currently operative in
22 the BellSouth system are capable of handling
23 unbundled loop assignments?

24 A: Yes.

25 Q: They are?

26 A: Yes.

27 Q: And they do not need to be modified to do so?

1 A: Since they are operational--unbundled loop
2 are provisioned today using the identical
3 process we used for special access, which is
4 the ASR process. . . . [T]o the extent TIRKS
5 and LFACS are used in that process, they
6 could be used in the identical fashion or
7 similar fashion in the provision of an
8 unbundled loop that way.

9
10 TR at 709. Yet, BellSouth, through its employees, has
11 always asserted that LFACS and TIRKS cannot be used for the
12 provision of unbundled loops without major modifications,
13 and has used this assertion to deny Intermedia the form of
14 subloop unbundling that it specifically requested seven
15 months ago.

16
17 Q: PLEASE DESCRIBE INTERMEDIA'S EXPERIENCE WITH BELL SOUTH WITH
18 RESPECT TO BILLING FOR SERVICES THAT INTERMEDIA USES.

19
20 A: As I stated earlier, BellSouth has been claiming that
21 unbundled Frame Relay Loops are not currently available. In
22 order to provide frame relay service, Intermedia agreed with
23 BellSouth on an interim arrangement that would use tariffed
24 service elements to provide Intermedia with the ability to
25 transport its frame relay service until unbundled loops
26 became available. BellSouth proposed, and Intermedia
27 accepted, an arrangement by which Intermedia would purchase
28 a portion of BellSouth's Synchronet digital 56 kilobit

1 service. Under this agreement, Intermedia would only pay
2 one of the two rate elements--the Digital Local Channel
3 ("DLC") charge--associated with Synchronet service. (The
4 other charge that typically applies to Synchronet service is
5 the Interoffice Charge or IOC. That charge was excluded
6 because it reflects the cost of BellSouth's interoffice
7 facilities, and not its local loop facilities.) Moreover,
8 under this interim arrangement, the tariffed DLC charge
9 would be discounted at 17.3%, the wholesale discount
10 prescribed by the Commission. A copy of a document sent by
11 BellSouth to Intermedia that memorializes this rate
12 agreement is appended to this Testimony as Exhibit F. As is
13 evident from this document, the IOC charge was not supposed
14 to apply to Intermedia. Similarly, the document makes no
15 mention of a "node" charge.

16
17 In recent discussions with BellSouth, however,
18 Intermedia was advised that BellSouth had changed its
19 position and now contends that Intermedia must pay the IOC
20 charge as well as the DLC charge as the interim rate for its
21 Frame Relay loops. Moreover, BellSouth recently informed
22 Intermedia that it must also pay a \$25 "node" charge per
23 loop in addition to the IOC charges. A copy of Intermedia's
24 letter to BellSouth concerning this issue is appended to my
25 testimony as Exhibit G. A copy of BellSouth's
26 correspondence to Intermedia confirming the applicability of
27 the \$25 node charge is appended to my testimony as Exhibit
28 H.

1 BellSouth's position in this matter is patently
2 unreasonable because applying the full set of Synchronet
3 charges for a Frame Relay loop effectively imposes the same
4 charges for an unbundled loop that BellSouth imposes on a
5 fully bundled, end-to-end service. In addition, it forces
6 Intermedia to pay for interoffice and node functions that
7 Intermedia neither wants nor needs. BellSouth is
8 essentially taking rates that were meant to approximate an
9 unbundled Frame Relay loop and converting them into a
10 standard bundled Synchronet service charge. This result
11 clearly violates the mandate of Section 252(d)(1) and
12 271(d)(2)(ii) and (iv) of the 1996 Act, which require that
13 loops be unbundled from other services and that rates for
14 network elements must be "just and reasonable" and "based on
15 cost." Moreover, the dispute could be avoided altogether if
16 BellSouth would provide Intermedia with unbundled frame
17 relay loops. For these reasons, BellSouth has failed to
18 meet the standards for the provision of unbundled network
19 elements under Sections 251, 252 and 271(d)(2)(ii) and (iv).
20 BellSouth's unreliable information creates significant
21 confusion and uncertainty which has the effect of delaying
22 Intermedia's entry into the local exchange market in Georgia
23 as a facilities-based carrier.

24
25 BellSouth has been similarly confusing in its position
26 on the application of wholesale discounts. BellSouth
27 account representatives consistently have informed us that
28 when Intermedia resells BellSouth service, the applicable

1 wholesale discounts do not apply to nonrecurring charges.
2 However, Mr. Scheye has testified that nonrecurring charges
3 are subject to the same wholesale discounts that apply to
4 monthly recurring rates. TR at 730. BellSouth's
5 contradictory information creates significant confusion and
6 uncertainty which has the effect of delaying Intermedia's
7 entry into the local exchange market in Georgia as a
8 facilities-based carrier.

9

10 COMPLIANCE WITH STATUTORY REQUIREMENTS

11

12 Q: HOW SHOULD THE COMMISSION INTERPRET SECTION 271(c)(1) OF THE
13 ACT?

14

15 A: The Commission should interpret Section 271(c)(1) of the
16 1996 Act to mean that once a competitive carrier has
17 requested an interconnection agreement with a Bell Operating
18 Company ("BOC"), the BOC is precluded from seeking in-region
19 interLATA authority under Section 271(c)(1)(B) ("Track B"),
20 as long as the interconnection request is made at least
21 three months prior to the BOC's interLATA entry request
22 under Section 271(c)(1)(B). Once the interconnection
23 request has been put in motion, a BOC cannot seek interLATA
24 authority under Section 271(c)(1)(B), but can instead
25 qualify for interLATA authority only under Section
26 271(c)(1)(A) ("Track A"). Moreover, a BOC can secure
27 interLATA authority under Track A only if there exists in
28 the state for which in-region interLATA authorization is

1 sought a competitive local exchange carrier who is providing
2 facilities-based service to business and residential
3 customers as a result of a fully implemented interconnection
4 agreement with the BOC. Any other reading would contravene
5 the underlying purpose of the 1996 Act of opening the local
6 exchange market and encouraging the development of
7 facilities-based competition.

8
9 BellSouth's reading of the statute, which would require
10 that an existing facilities-based carrier providing service
11 to both residential and business customers must have
12 requested interconnection in order for BellSouth to be
13 precluded from seeking in-region interLATA authority under
14 Section 271(c)(1)(B), is directly at odds with both the
15 spirit and explicit mandates of the 1996 Act and simple
16 common sense.

17
18 Congress saw two ways of authorizing BOC entry into the
19 in-region interLATA market: (1) facilities-based
20 competition via interconnection, or (2) in the absence of
21 interconnection requests, via a statement of generally
22 available terms and conditions. Common sense makes these
23 two tracks mutually exclusive. A BOC has an incentive to
24 fail to implement a negotiated or arbitrated interconnection
25 agreement if it can unilaterally set terms more favorable to
26 it under a statement of generally available terms and
27 conditions.

1 It was not Congress' intent to allow a statement of
2 generally available terms and conditions to defeat the
3 interconnection process. Nothing in the 1996 Act or its
4 legislative history suggests that Track A and Track B are in
5 conflict. Rather, Track B supplements--rather than
6 supplants--Track A.

7
8 If BellSouth can obtain in-region interLATA
9 authorization under Track B, it has no incentive to
10 implement its interconnection agreements with competitive
11 local exchange carriers. Indeed, Intermedia's own
12 experience clearly demonstrates this scenario. If BellSouth
13 is permitted to seek entry under Track B while numerous
14 interconnection agreements continue to languish, and
15 competitive carriers continue to face uncertainties as to
16 whether their agreements will eventually be implemented,
17 BellSouth is effectively able to unilaterally set the rules
18 of the game.

19
20 **Q: HAS BELL SOUTH MET THE REQUIREMENTS OF SECTION 271(c)(1)(A)**
21 **OF THE TELECOMMUNICATIONS ACT OF 1996?**

22
23 **A: BellSouth has not met the requirements of Section**
24 **271(c)(1)(A) of the 1996 Act. While BellSouth has entered**
25 **into an Agreement with Intermedia specifying the terms and**
26 **conditions under which BellSouth will provide Intermedia**
27 **with access and interconnection to its network facilities**
28 **(see Exhibit A), it has failed to devote the resources**

1 necessary to implement the Agreement. In fact, BellSouth
2 has not met deadlines agreed to and set forth in the
3 Interconnection Agreement Implementation Plan
4 ("Implementation Plan"), which was executed by Intermedia
5 and BellSouth subsequent to the execution of the Agreement.
6 In addition to BellSouth's failure to implement the
7 Agreement within the agreed upon timeframes, BellSouth is
8 now interpreting various provisions of the Agreement in a
9 manner clearly not intended or contemplated by the parties.
10 As a consequence, BellSouth has failed to live up to certain
11 aspects of the Agreement. BellSouth's conduct has had the
12 effect of delaying Intermedia's entry as a facilities-based
13 carrier into the local exchange market in Georgia, and has
14 forced Intermedia to rely on resale in order to enter the
15 Georgia local services market.

16

17 Q: HAS BELL SOUTH PROVIDED INTERCONNECTION TO INTERMEDIA IN
18 ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 251(C)(2) AND
19 252(D)(1) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO
20 SECTION 271(C)(2)(B)(I) AND APPLICABLE RULES PROMULGATED BY
21 THE FCC?

22

23 Q: No, BellSouth has not provided interconnection to Intermedia
24 in accordance with the requirements of Sections 251(c)(2)
25 and 252(d)(1) of the Telecommunications Act of 1996,
26 pursuant to Section 271(c)(2)(B)(i) and Sections 51.305 and
27 51.321 of the FCC's rules. As discussed in more detail
28 below, BellSouth has refused certain interconnection
29 requests by Intermedia and has failed to implement certain
30 tracking and data exchange processes in a timely manner.

1 BellSouth and Intermedia agreed to three methods of
2 interconnecting facilities: (i) physical collocation; (ii)
3 virtual collocation where physical collocation is not
4 practical for technical reasons or space limitations; and
5 (iii) interconnection via the purchase of facilities from
6 either party by the other party. BellSouth and Intermedia
7 agreed that reciprocal connectivity would be established at
8 BellSouth access tandems or end offices. The rates, terms
9 and conditions for interconnection were negotiated by
10 BellSouth and Intermedia. The pricing methodology used for
11 interconnection is set forth in Section IV of the Agreement,
12 and the referenced attachments. Intermedia has not
13 requested or reviewed BellSouth's cost data or studies.
14 While BellSouth has agreed to provide Intermedia with
15 interconnection, it has failed to implement the Agreement
16 and to provide interconnection to Intermedia in accordance
17 with the requirements of Sections 251(c)(2) and 252(d)(1) of
18 the Telecommunications Act of 1996, pursuant to Section
19 271(c)(2)(B)(i) and sections 51.305 and 51.321 of the FCC's
20 rules.

21

22 First, while BellSouth has entered into an agreement
23 with Intermedia specifying the terms and conditions under
24 which BellSouth will provide Intermedia with access and
25 interconnection to its network facilities, it has failed to
26 devote the resources necessary to implement the provisions
27 of the Agreement, including provisions related specifically
28 to interconnection. In fact, BellSouth has not met

1 deadlines agreed to and set forth in the Implementation
2 Plan. For example, the Implementation Plan calls for the
3 tracking of local exchange and extended area service traffic
4 for compensation purposes, and for the exchange of traffic
5 data between companies. The timeframe for implementation
6 for these items was October 1, 1996. To date, BellSouth has
7 not even put in place a process for implementation.

8
9 Second, Section 251(c)(2) requires interconnection at
10 any technically feasible point in the incumbent local
11 exchange carrier's network. Despite this explicit statutory
12 language, BellSouth has refused Intermedia's request for
13 subloop unbundling.

14
15 As a consequence of the foregoing, BellSouth is neither
16 providing interconnection to Intermedia according to the
17 terms agreed to by the parties, nor is it providing
18 interconnection to Intermedia in accordance with the
19 requirements of Sections 251(c)(2) and 252(d)(1) of the
20 Telecommunications Act of 1996, pursuant to Section
21 271(c)(2)(B)(i) and applicable rules promulgated by the FCC.

22
23 **Q: HAS BELL SOUTH PROVIDED NONDISCRIMINATORY ACCESS TO NETWORK**
24 **ELEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS**
25 **251(C)(3) AND 252(D)(1) OF THE TELECOMMUNICATIONS ACT OF**
26 **1996, PURSUANT TO SECTION 271(C)(2)(B)(II) AND APPLICABLE**
27 **RULES PROMULGATED BY THE FCC?**

28
29 **A:** BellSouth has not provided interconnection to Intermedia in
30 accordance with the requirements of Sections 251(c)(3) and